



**BOISE, TUESDAY, JUNE 17, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 34043/34159**

<b>ACTION COLLECTION SERVICE, INC.,</b>	)
<b>an Idaho corpotaion,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>MATTHEW HAUGHT and EMILY</b>	)
<b>CLEGG,</b>	)
	)
<b>Defendants-Third Party Plaintiffs-</b>	)
<b>Respondents,</b>	)
	)
<b>and</b>	)
	)
<b>CHAPMAN ENTERPRISES, INC. dba</b>	)
<b>CHAPMAN PROPERTIES,</b>	)
	)
<b>Third Party Defendant-Appellant.</b>	)
	)

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. D. Duff McKee, District Judge. Hon. Roy C. Holloway, Magistrate.

Neal & Uhl, PLLC, Boise, for appellant.

Campbell& Walterscheid LLP, Boise, for respondent.

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Matthew Haught and Emily Clegg entered into a rental agreement with Chapman Enterprises, Inc. (Chapman) for the lease of a residential property in Boise. After Haught and Clegg vacated the property, Chapman assigned the account to Action Collection Service, Inc. (Action). Action filed a complaint against Haught and Clegg to collect the outstanding debt arising from the rental agreement. Haught and Clegg filed a third-party complaint against Chapman. The magistrate dismissed Haught and Clegg's third-party complaint for failure to comply with the notice provision of I.C. § 6-320(d). Haught and Clegg appealed to the district court, which reversed the magistrate's order of dismissal on the theory that a counterclaim does not "commence an action" and is therefore exempt from the notice requirement. Action and Chapman now appeal.

**BOISE, TUESDAY, JUNE 17, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 34647**

<b>TWONG PETER NGUYEN, an individual,</b>	)
	)
<b>Plaintiff-Counterdefendant-</b>	)
<b>Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>HOA K. BUI and JOCELYN N. BUI,</b>	)
<b>husband and wife, MONGO GRILL, INC.,</b>	)
<b>an Idaho corporation,</b>	)
	)
<b>Defendants-Counterclaimants-</b>	)
<b>Appellants.</b>	)
	)

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Bill Smith & Associates, P.A., Boise, for appellant.

Runft & Steele Law Offices, PLLC, Boise, for respondent.

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Hoa K. Bui and Jocelyn N. Bui solicited funds from Twong Peter Nguyen for a restaurant they were developing called the Mongo Grill. Nguyen contributed \$25,000 toward the project. Shortly after the restaurant opened, relations between the parties soured. Nguyen decided to withdraw from the business, and a document was created reflecting an agreement that Mongo Grill, Inc., owed Nguyen \$25,000 and would pay him back within six months. The Buis wrote a check to Nguyen from their personal account in the amount of \$12,500, but stopped payment before he was able to deposit it. They later delivered to Nguyen two other checks from their personal account in the amounts of \$7,000 and \$5,500. Nguyen filed a lawsuit against the Buis for the \$12,500 still owing. Mongo Grill, Inc., stipulated to the entry of judgment against it. Additionally, the district court determined that the Buis were personally liable for this amount, and awarded attorney fees against both Mongo Grill, Inc., and the Buis. The Buis appeal, contending that their only obligation was for \$12,500 and was satisfied by the two checks they delivered to Nguyen. Additionally, the Buis and Mongo Grill, Inc., assert that the district court erred by failing to apportion the attorney fee award between them.

**BOISE, THURSDAY, JUNE 19, 2008, AT 9:00 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 34082**

<b>STATE OF IDAHO,</b>	)
	)
<b>Plaintiff-Respondent,</b>	)
	)
<b>v.</b>	)
	)
<b>JAMES JOSEPH EVERETT DURHAM,</b>	)
	)
<b>Defendant-Appellant.</b>	)
_____	)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Thomas Tharp, Deputy Attorney General, Boise, for respondent.

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In December 2006, James Joseph Everett Durham entered a bank wearing a hooded sweatshirt, gloves, and sunglasses. When he approached the counter a teller, asked him to remove his hood and sunglasses and he complied. He then handed the teller a note that read, "I have a gun need money \$ please." The teller handed Durham several thousand dollars, and he left the bank. Durham discarded his gloves in the street and his sweatshirt in a dumpster. Durham then entered a flower store and purchased flowers. Approximately twenty minutes after the robbery, an officer stopped Durham's car because it matched a description of the vehicle the suspect had used to flee the scene of the robbery. The bank teller identified Durham, and a subsequent search of his car revealed the stolen money.

Approximately one month prior to the robbery, Durham had checked himself in to Intermountain Hospital because he thought he was about to lose control. At the hospital, Durham received two days of inpatient care before being released. The Intermountain doctor recommended follow-up care, but Durham did not pursue treatment.

Durham was charged with robbery. The magistrate ordered a competency evaluation of Durham. Durham was determined to be competent. Durham pled guilty to robbery. The district court sentenced Durham to a unified term of fifteen years, with a minimum period of confinement of five years. Durham appeals, asserting that his sentence is excessive and that the district court abused its discretion by failing to sua sponte order a psychological evaluation prior to sentencing.

**BOISE, THURSDAY, JUNE 19, 2008, AT 10:30 A.M.**

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 34271**

<b>SHANE McKAY,</b>	)
	)
<b>Petitioner-Appellant,</b>	)
	)
<b>v.</b>	)
	)
<b>STATE OF IDAHO,</b>	)
	)
<b>Respondent.</b>	)
<hr/>	)

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Renae J. Hoff, District Judge.

Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Shane McKay appeals from the district court's summary dismissal of his petition for post-conviction relief, which sought relief from his conviction by jury for vehicular manslaughter. McKay contends that his criminal trial attorney was ineffective for failing to object to a jury instruction that lowered the State's burden of proof by omitting two elements that are required for proof of vehicular manslaughter. McKay also contends that his attorney who handled the appeal from McKay's conviction was ineffective for failing to raise the issue of error in the jury instruction on that appeal.